

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

COREY A. ASKEW,

Plaintiff,

Case No. 07-11820

vs.

David M. Lawson
United States District Judge

SERGEANT CROPSEY, et al,

Michael Hluchaniuk
United States Magistrate Judge

Defendants.

ORDER DENYING MOTION FOR JURY TRIAL AS MOOT

This is a civil rights action brought pursuant to 42 U.S.C. § 1983. In his complaint, plaintiff alleges that defendants were deliberately indifferent to his serious medical needs and inflicted on him both physical and mental distress. (Dkt. # 1). In his complaint, plaintiff also provided notice of his demand for a jury trial. (Dkt. # 1). Subsequently, plaintiff filed a “Motion Demanding A Jury Trial,” apparently believing that he had “improperly demanded a jury trial within the complaint...” (Dkt. # 34, p. 2).

Fed.R.Civ.P. 38(b) provides that a party may demand a trial by jury by serving the other parties with a written demand at any time after the

commencement of the action, but no later than 10 days after service of the last pleading directed to the issues to be tried by the jury. The filing of the demand must comply with Rule 5(d) and may be “indorsed upon a pleading of the party.” Although “no particular form of writing is required, and the demand may be ‘included in a pleading,’ it is desirable that the demand be either in a separate document or set off from the main body of the pleading in order to make it readily recognizable.” Wright & Miller, 9 Fed. Prac. & Proc. Civ.2d § 2318.

While plaintiff did not file his demand in a separate pleading and included it in his complaint, this course of action is expressly permitted by Rule 38(b). Moreover, the jury demand, which is set forth in large capital letters just below the caption of plaintiff’s complaint, is clearly “set off from the main body” of the complaint, providing easily recognizable notice of his demand. Finally, given that the jury demand is set forth on the face of the complaint, there is no question that it was “served on all parties and filed in accordance with Rule 5(d)” when the complaint was filed and served. *See* Wright & Miller, 9 Fed. Prac. & Proc. Civ.2d § 2318. As such, this Court concludes that plaintiff properly demanded, in his complaint, a jury trial for all issues so triable. *See* Rule 38(c) (“In the demand a party may specify the issues which the party wishes so tried; otherwise the party shall be deemed to have demanded trial by jury for all the issues so triable.”). Thus, plaintiff’s motion demanding a jury trial is **DENIED** as moot.

IT IS SO ORDERED.

The parties to this action may object to and seek review of this Order, but are required to file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and Local Rule 72.1(d)(2). A party may not thereafter assign as error any defect in this Order to which timely objection was not made. Fed.R.Civ.P. 72(a). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. Pursuant to Local Rule 72.1(d)(2), a copy of any objections is to be served on this Magistrate Judge.

Date: April 15, 2008

s/Michael Hluchaniuk
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on April 15, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send electronic notification to the following: Christine M. Campbell, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Corey A. Askew, #248840, Alger Maximum Correctional Facility, Industrial Park Drive, Post Office Box 600, Munising, MI 49862.

s/James P. Peltier
Courtroom Deputy Clerk
U.S. District Court
600 Church Street
Flint, MI 48502
(810) 341-7850
pete_peltier@mied.uscourts.gov